

Robert Evans Mahler, Pro Se
P.O. Box 7658
Salem, Oregon 97303
(503) 589-4878

19 NOV '20 12:42 REC'D USDC-ORF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Robert Evans Mahler,

Plaintiff,

v.

McKenzie-Willamette Medical
Center; Oregon Medical Group;
DOES 1 -20,
Defendants

Civil Action No. *6:20-cv-2016-AA*

Complaint in Tort (Federal Tort

Claims Act 28 U.S.C. 2671);

Civil Rights; Negligence;

Gross Negligence; Intentional

Infliction of Emotional

Distress; Violation(s) of the

ADA Americans with

Disabilities Act

Jury Trial Requested

Robert Mahler brings this lawsuit against Defendants
McKenzie-Willamette Medical Center (MVMC), Oregon Medical Group
(OMG), and Does 1-20. In support of these allegations, plaintiff
states:

1. The plaintiff is a resident of the County of Marion, State
of Oregon. The matter in controversy exceeds fifty thousand
dollars (\$50,000), exclusive of interest, and costs. That the

1 amount sought in this suit exceeds the jurisdiction limit of the
2 Oregon District Court. The venue that is a most appropriate is
3 Portland, Oregon as defendants MWMC, OMG, and DOES 1-20,
4 maintain their principal place of business and, or employment in
5 Springfield and Eugene, Oregon.

6 2. Defendant, (MWMC), is an Oregon Corporation providing
7 medical services to the citizens of Springfield and has its
8 principal place of business located in Springfield, Oregon.

9 3. OMG is an Oregon Corporation providing medical services to
10 the citizens of Eugene and has its principal place of business
11 located in Eugene, Oregon.

12 4. Defendants, DOES 1-20, are physicians, nurses, medical
13 technicians, doctor assistants, and, or staff members, at all
14 times herein relevant, past or present employees of MWMC and, or
15 OMG. They are being sued here, both as individuals, and in any
16 official capacity. "DOES" is a fictitious name used to
17 designate parties not presently known to plaintiff.

18 4. The term "defendants" is used in this Complaint to refer to
19 all defendants, MWMC, OMG, and DOES 1-20 collectively and
20 individually, unless otherwise specified.

21 5. Medical malpractice, medical, and other errors occurred on
22 and, or before, February 19, 2019, and after that, in the State
23 of Oregon.

24 6. The defendants, and DOES 1-20, at all times herein
25 relevant, were employees of the defendants, MWMC, OMG. "DOES"
26 is a fictitious name used to designate parties not presently
27 known to plaintiff.
28
29

1 7. Plaintiff suffers disabilities from advanced osteo-
2 arthritis, left-sided hemiplegia as the result of a C-3 cervical
3 fracture, vasovagal syncope, and left and right knee implant
4 prosthetics. As a result of plaintiff's disabilities, he has
5 used a service dog for 15 years.

6 8. All defendants are medical providers providing medical
7 services in Oregon at the time of the medical malpractice. All
8 employees/agents/associates/DOES 1-20, of Defendants MWMC and
9 OMG, were acting within the scope of that
10 employment/agency/associate relationship, when they failed to
11 follow the applicable standard of medical care during their
12 treatment of the plaintiff on or about February 19, 2019. MWMC,
13 Springfield, OR and OMG, Eugene. OR, were in charge at the times
14 plaintiff was injured.

15 9. Prior to February 19, 2019, plaintiff was examined by
16 doctors, medical assistants, and other staff, at OMG and MWMC.
17 It was determined by OMG, MWMC, and DOES 1-20 defendants, that
18 plaintiff is a candidate for shoulder replacement surgery.

19 10. On, or about, February 19, 2019, plaintiff was admitted to
20 MWMC for shoulder replacement surgery.

21 11. On, and before, February 19, 2019, plaintiff requested that
22 defendants place him under anesthesia immediately after being
23 dressed for surgery to prevent a vasovagal response. All
24 defendants agreed with plaintiff's request.

25 12. Plaintiff is protected by the ADA as he is a person with a
26 "disability" as that term is defined by the statute; 42 U.S.C. §
27 12102(2)(a). Plaintiff has a "physical or mental impairment
28
29

1 that substantially limits one or more of [his] major life
2 activities." Plaintiff owns and uses a service dog defined in
3 5 U.S.C. 301; 28 U.S.C. 509, 510, 42 U.S.C. 12186(b), and both
4 are protected by the ADA.

5 **ALLEGATIONS**

6 13. On, or about, 2/19/19, as a direct result of the defendants
7 breaching the applicable standard of medical care owed to the
8 plaintiff by failing to inform the plaintiff of the change in
9 surgery schedule, plaintiff experienced undue and excessive
10 anxiety, fear, uncertainty and, and a result of not being
11 noticed of the the change in schedule, was physically and
12 psychologically injured due to the onset of a vasovagal response.

13 14. On, or about, 2/19/19, Defendant DOE 1, and DOE 3, licensed
14 physician anesthesiologists, were required and affirmed that
15 they would provide the proper medical care, treatment, and
16 advice to plaintiff, and at all times that they provided medical
17 care, treatment, and advice to the plaintiff, they was under the
18 supervision of defendant DOE 2, a licensed physician surgeon.
19 As a result of not being anesthetized upon arrival into pre-op
20 at MWMC, plaintiff was physically and psychologically injured
21 due to the onset of a vasovagal response.

22 15. On, or about, 2/19/19, defendants DOES 1, 2, and 3, all
23 medical doctors, under the applicable standard of medical care,
24 owed a duty to the plaintiff to supervise the medical care that
25 DOES 4-20, physician's assistants, nurses, and phlebotomists,
26 were providing to the plaintiff. The defendant medical doctors,
27 and all assistant medical staff, breached this duty and standard
28 of care by failing to adequately supervise, which resulted in
29

1 the failure to inform the plaintiff of the change in surgery
2 schedule, switch in anesthesiologists, and inability to locate
3 the whereabouts of the attending surgeon. All of these failures
4 amount to a breach of the applicable standard of medical care.

5 16. That as a direct and proximate result of the breach of the
6 applicable standard of medical care by all defendants, the
7 plaintiff has suffered the following harms: 1) suffered
8 conscious pain and suffering both in the past and, it is
9 expected by his physicians, the future, 2) incurred medical
10 expenses in the past and will incur future medical expenses, 3)
11 suffered mental and emotional anguish, 4) continues suffering
12 from permanent physical injuries and increased disabling pain,
13 and 5) has sustained other damages.

14 17. All of the injuries and damages sustained by plaintiff were
15 the direct and proximate result of the negligent actions and
16 breaches of the applicable standards of medical care by all
17 defendants without any act or omission on the part of the
18 plaintiff directly thereunto contributing.

19 **CAUSES OF ACTION**

20 18. Plaintiff is entitled to recover damages from defendants
21 jointly and each of them based on the theories of liability
22 hereinafter enumerated in Counts I through 5, and under such
23 other theories of liability as may be appropriate based upon the
24 facts as alleged herein or as revealed during discovery.

25 **Count 1**

26 **Negligence - Medical Malpractice**

27 19. Plaintiff re-alleges and incorporates by reference
28 paragraphs 1-18 pursuant to this cause of action.
29

1 20. Defendants had a duty to plaintiff to provide him with
2 applicable standards of medical care medical care.

3 21. Defendants breached their duty to plaintiff by failing to
4 inform the plaintiff of the the change in surgery schedule,
5 switch in anesthesiologists, and inability to locate the
6 whereabouts of the attending surgeon.

7 22. By reason of defendant's failures, plaintiff suffers daily
8 increased pain and discomfort, further exacerbation of his
9 disabilities, and decreased capabilities. Gradually, over a
10 period of time by reason of defendant's negligence, plaintiff
11 was caused to be injured as follows, to-wit: he experienced
12 increased levels of pain and discomfort; he is experiencing
13 decreased mobility and sensory loss; his pre-existing osteo-
14 arthritis was greatly aggravated; his body was made sore; he is
15 suffering increased pain and mental anguish; he was caused to
16 lose sleep and weight; and he later incurred expenses for
17 medical attention.

18 23. Plaintiff avers that defendants' breach of duty and
19 negligence was a proximate cause of injury and damage to
20 plaintiff that resulted from failures by defendants to provide
21 agreed upon medical attention and care.

22 **Count 2**

23 **Gross Negligence - Medical Malpractice**

24 24. Plaintiff re-alleges and incorporates by reference
25 paragraphs 1-23 pursuant to this cause of action.

26 25. Plaintiff avers that defendants breached their duty to him
27 by wantonly injuring and damaging plaintiff by not providing
28 applicable standards of medical care. For example:
29

1 a. Defendants moved the surgery time without notice to
2 plaintiff.

3 b. Defendants switched plaintiff's anesthesiologist without
4 notice to plaintiff.

5 c. Defendant's attending anesthesiologist was not advised,
6 and did not know, how to proceed with plaintiff's surgery
7 preparations.

8 d. Defendants refused to allow plaintiff's service dog to
9 accompany plaintiff to pre-op. Supervising "charge nurse"
10 claimed "sterile" environment (which obviously wasn't). The
11 actions and behavior of the pre-op medical personnel seemed to
12 be intentionally aggravating plaintiff to induce his vasovagal
13 response as a clinical experiment.

14 e. Attending anesthesiologist had no knowledge of patient
15 "vaso vagal" response issues despite patient discussions with
16 initial interviewing anesthesiologist previous discussions with
17 surgeon and his surgeon's nurse.

18 f. Attending anesthesiologist suggested that the patient be
19 "calmed / sedated" via "sedation" until surgery and then would
20 talk to surgeon before surgery. This would not entail making the
21 patient unconscious to protect against vaso vagal response
22 despite previous discussions with initial interviewing
23 anesthesiologist, surgeon, and surgeon's nurse to this effect
24 and medical necessity to this effect.

25 g. Attending anesthesiologist asked nurses what surgeon
26 wants done to patient. Older nurse referred to clipboard,
27 flipped through stack of paper pages, answered "there is nothing
28 in here" (nothing in patient's medical records).
29

1 h. Interviewing anesthesiologist had previously informed
2 patient that neck nerve block procedure, if performed
3 improperly, could cause quadriplegia. Patient asked surgeon's
4 nurse to make sure the McKenzie Willamette Hospital and
5 attending anesthesiologist were aware that patient did not want,
6 under any circumstances, the neck nerve block procedure
7 performed prior to surgery.

8 i. Attending anesthesiologist stated that he was unaware of
9 a risk of quadriplegia with the neck nerve block procedure
10 previously stated to patient by interviewing anesthesiologist.
11 Attending anesthesiologist additionally stated that there was
12 risk of permanent nerve impairment in arm (numbness) that could
13 be caused by nerve block procedure that the interviewing
14 anesthesiologist did not mention or discuss with patient.
15 Subsequent nurse / assistant placed heater (hot air blow)
16 apparatus under plaintiff's blankets, causing uncomfortable
17 overheating until removed by the plaintiff.

18 j. Nursing assistant placed blankets on plaintiff, asked if
19 plaintiff wants heat, plaintiff answered "No!"

20 k. Plaintiff asked "When will surgeon visit"? First answer
21 by nurse / assistant, "Surgeon is not here yet". Second answer
22 by different nurse / assistant "Surgeon is still in surgery."

23 26. As a result of the gross carelessness and wanton negligence
24 of defendants, plaintiff sustained severe increased injuries to
25 his body, consisting of, but not limited to: increased
26 aggravation to pre-existing osteo-arthritis of both shoulders
27 hips and back; plaintiff suffered great pain of body and mental
28 anguish, evidenced by the need for continued corrective surgery;
29

1 large sums have been, and will be, expended for his medical care
2 and treatment; all to his, the said plaintiff's loss and damage.

3 27. Plaintiff avers that defendants' breach of duty, wanton
4 conduct, and gross negligence was the proximate cause of injury
5 and damage to him as set forth above.

6 **Count 3**

7 **Violations of the Americans with Disabilities Act**

8 28. Plaintiff re-alleges and incorporates by reference
9 paragraphs 1-27 pursuant to this cause of action.

10 29. Defendants have violated Title II and Title III of the
11 Americans with Disabilities Act which prohibits discrimination
12 in testing and which prohibits denial of services, benefits, and
13 programs to people with disabilities by public entities.

14 30. As a direct and proximate result of the defendants'
15 wrongful acts, omissions, and misconduct, plaintiff has been
16 injured and demands judgment against the defendants jointly,
17 severally and/or in the alternative on this cause of action
18 other damages in an amount in excess of the jurisdictional
19 limits of this Court and to be determined at the trial herein,
20 together with interest, exemplary or punitive damages,
21 attorney's fees and costs of this action.

22 **COUNT 4**

23 **ADA VIOLATION - FAILURE TO ACCOMODATE**

24 31. Plaintiff re-alleges and incorporates by reference
25 paragraphs 1-30 pursuant to this cause of action.

26 32. Plaintiff has specific medical limitations imposed on him,
27 as such; plaintiff is a disabled individual within the
28
29

1 definitions of the laws in the State of Oregon and the Americans
2 with Disabilities Act (ADA).

3 33. Defendants and each of them were aware of Plaintiff's
4 medical conditions, restrictions, and disabilities.

5 34. Defendants did not attempt to accommodate plaintiff or
6 engage in any interactive process to explore his limitations and
7 possible accommodations.

8 35. Defendants did not engage in any interactive process to
9 attempt to accommodate plaintiff during his visit to the MWMC.

10 36. As a proximate result of defendant's discrimination against
11 plaintiff, plaintiff has suffered and continues to suffer
12 embarrassment, humiliation and mental anguish all to his damage
13 in an amount according to proof.

14 37. As a result of defendants' discriminatory acts as alleged
15 herein, plaintiff is entitled to reasonable attorneys' fees and
16 costs of said suit as provided by the Americans with
17 Disabilities Act section 12205.

18 38. The Defendants committed the acts alleged herein
19 maliciously, fraudulently and oppressively, with the wrongful
20 intention of injuring Plaintiff, from an improper and evil
21 motive amounting to despicable conduct and in conscious
22 disregard of Plaintiff's rights. Thus, Plaintiff is entitled to
23 recover punitive damages from Defendants in an amount according
24 to \$500,000.00.

25 **COUNT 5**

26 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

27 39. Plaintiff re-alleges and incorporates by reference
28 paragraphs 1-38 pursuant to this cause of action.
29

1 40. Defendants MPMC, PTTC, and DOES 1-20, acted in an extreme
2 and outrageous manner by forcing and making it necessary for
3 plaintiff to leave the MPMC. This was done to force plaintiff
4 to leave because plaintiff was accompanied by his service dog
5 and plaintiff suffers from vasovagal.

6 41. Defendants actions were done to cause plaintiff harm, with
7 reckless disregard for plaintiff's physical condition, and the
8 probability of causing emotional distress.

9 42. Defendants actions did cause plaintiff to suffer increased
10 severe psychological pain and suffering.

11 43. Defendants actions caused Plaintiff to suffer depression, low
12 self-esteem, anxiety, stress, mental, and emotional anguish.

13 44. As a proximate result of the defendant's actions, plaintiff
14 has suffered and continues to suffer embarrassment, humiliation,
15 anxiety and mental anguish all to his damage in an amount
16 according to proof.

17 45. Furthermore, the Defendants committed the acts alleged
18 herein maliciously and oppressively, with the wrongful intention
19 of injuring Plaintiff, from an improper and evil motive
20 amounting to despicable conduct and in conscious disregard
21 of Plaintiff's rights. Thus, Plaintiff is entitled to recover
22 punitive damages from Defendants in an amount according to proof.
23
24
25
26
27
28
29

1
2
3
4
5 WHEREFORE, plaintiff demands judgment against the defendants,
6 jointly and severally, as follows:

- 7 a. For general damages according to proof, including damages
8 for emotional distress, humiliation and mental anguish
9 \$250,000.00;
10 b. For special damages according to proof, \$500,000.00;
11 b. As punitive damages, the sum of \$500,000.00;
12 c. The costs and disbursements of this action;
13 d. All future attorney fees incurred in prosecuting this
14 action pursuant to U.S.C. Sect. 1988; and
15 e. Such other relief as the Court deems proper and just.
16

17
18 
19

Dated 11/17/20

20 Robert Evans Mahler
21
22
23
24
25
26
27
28
29